



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP 18 2013

James W. Pengilly, Esq.
Pengilly Robbins Slater
1755 Village Center Circle
Las Vegas, NV 89134

RE: MUR 6630
Nevada Republican Party

Dear Mr. Pengilly:

On August 23, 2012, the Federal Election Commission notified your client, Nevada Republican Party, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On September 10, 2013, the Commission found, on the basis of the information in the complaint, and information provided by your client, that there is no reason to believe the Nevada Republican Party violated 2 U.S.C. § 433(b) and 11 C.F.R. § 102.2(b). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Kasey Morgenheim, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

William Powers
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENT: Nevada Republican Party

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7 **I. GENERATION OF MATTER**

8 This matter was generated based by a Complaint filed with the Federal Election
9 Commission ("Commission") by Wiselet Ked Rouzard. See 2 U.S.C. § 437g(a)(1). The
10 Complaint raises the question of whether the Washoe County Republican Party, a party
11 committee located in Reno, Nevada, is affiliated with the Nevada Republican Party (or "State
12 Party"). The Complaint asserts that the Washoe County Republican Party is a county affiliate of
13 the Nevada Republican Party under the Federal Election Campaign Act of 1971, as amended (the
14 "Act"), and Commission regulations because it is funded by the State Party and subject to the
15 State Party's management and control. The Washoe County Republican Party maintains that,
16 because it has sole authority over its funds and activities, it is not affiliated with the Nevada
17 Republican Party; however, the Nevada Republican Party asserts that the Washoe County
18 Republican Party is affiliated with the State Party.

19 The factual record here does not settle whether the Washoe County Republican Party and
20 the Nevada Republican Party are affiliated under the Act and Commission regulations. But even
21 assuming they are affiliated, neither committee made nor received any excessive contributions.
22 Also, the Washoe County Republican Party intends to terminate. Accordingly, the Commission
23 finds no reason to believe that the Nevada Republican Party violated 2 U.S.C. § 433(b) and
24 11 C.F.R. § 102.2(b).

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 The Complaint alleges that the Washoe County Republican Party (which is governed by
4 the Washoe County Republican Central Committee (“Washoe Central Committee”)) falsely
5 claims that it is not affiliated with the Nevada Republican Party (which is governed by the
6 Nevada Republican Central Committee (“Nevada Central Committee”)).¹ Compl. at 1. The
7 Washoe County Republican Party’s Statement of Organization, filed with the Commission on
8 June 22, 2012, does not list any affiliated political committees, and an accompanying letter from
9 the Washoe County Republican Party’s treasurer Lynne L. Hartung, dated June 25, 2012,
10 confirms that the Washoe County Republican Party will conduct its activity as a federal local
11 party committee that is not affiliated with its state party committee.² See Letter from Lynne L.
12 Hartung, Treasurer, Washoe County Republican Party, to Chair Caroline C. Hunter and Vice
13 Chair Ellen L. Weintraub, FEC (Jun. 25, 2012). The letter claims that the Washoe County
14 Republican Party is not funded by, or under the management or control of, the Nevada Central
15 Committee, and does not conduct its activity in cooperation, consultation, or concert with, or at
16 the request or suggestion of, the Nevada Central Committee. *Id.*

17 The Complaint asserts that the Washoe County Republican Party is affiliated with the
18 Nevada Republican Party for several reasons. First, the Complaint contends that the Washoe
19 County Republican Party received funding from the Nevada Central Committee in 2010 and

¹ Consistent with the Responses of the Washoe County Republican Party and the Nevada Republican Party, the Commission treats the Washoe County Republican Party as interchangeable with the Washoe Central Committee, and the Nevada Republican Party as interchangeable with the Nevada Central Committee.

² The Washoe County Republican Party’s original Statement of Organization classified it as a state committee of the Republican Party. The Washoe County Republican Party filed Amended Statements of Organization on July 19, 2012, and August 24, 2012. These Amended Statements of Organization reclassify the Washoe County Republican Party as a “subordinate” committee of the Republican Party but maintain that it is not affiliated with the Nevada Republican Party or any other state party committee.

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1 2011. Compl. at 1. Second, the Complaint alleges that provisions in the Washoe Central
2 Committee and Nevada Republican Party bylaws, which are attached to the Complaint,
3 demonstrate that the Washoe County Republican Party is “under the management and control” of
4 the State Party. *Id.* at 1 (emphasis and internal quotation marks omitted). Specifically, the
5 Complaint asserts that under Washoe Central Committee bylaws, officers of the Washoe County
6 Republican Party are subject to the bylaws of the Nevada Republican Party, the Washoe County
7 Republican Party Convention elects delegates to the State Party convention, the Nevada
8 Republican Party has the power to require a convention of the Washoe County Republican Party,
9 and the Washoe Central Committee elects a delegation to the Nevada Central Committee. *Id.* at
10 1-2. Also, under Nevada Republican Party bylaws, officers and representatives of the Washoe
11 Central Committee allegedly exercise political and financial control over the State Party. *Id.* at
12 2. Finally, the Complaint alleges that Dave Buell, Chairman of the Washoe County Republican
13 Party, claimed during a conference call that the filing of the Statement of Organization with the
14 Commission was a “legal and financial game,” and that the Washoe County Republican Party is
15 not disaffiliating from the Nevada Republican Party. *Id.* The Complaint also asserts that Buell
16 sought oversight and influence over State Party business during Nevada Republican Party
17 Executive Committee calls. *Id.*

18 The Washoe County Republican Party maintains that it is not affiliated with the Nevada
19 Central Committee. Its Response asserts that it is governed by separate bylaws as determined by
20 the Washoe Central Committee and that it raises and spends funds at its sole discretion. Washoe
21 County Republican Party Resp. at 1. For six reasons, the Washoe County Republican Party
22 contends that it is not affiliated with the Nevada Central Committee under 11 C.F.R.
23 § 110.3(b)(3):

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- 1 • First, it does not receive funds from any other political committee established, financed,
2 maintained or controlled by any party unit.
- 3
- 4 • Second, although the chairman of the Washoe County Republican Party is a member of
5 the executive board of the Nevada Central Committee under the Nevada Central
6 Committee's bylaws, the Washoe County Republican Party does not operate under the
7 direction of the Nevada Central Committee and has its own officers.
- 8
- 9 • Third, the Washoe County Republican Party does not consult with the Nevada Central
10 Committee and the Nevada Central Committee has no jurisdiction over how the Washoe
11 County Republican Party spends its funds.
- 12
- 13 • Fourth, the funds that the Washoe County Republican Party received from the Nevada
14 Central Committee — \$398.60 in November 2010 and \$150 in April 2011 — were
15 specifically allocated through the Nevada Central Committee's "United Republican
16 Fund," whereby donors could allocate 10% of their contributions to the Nevada Central
17 Committee to other Republican organizations or county parties, and were not maintained
18 or financed by the Nevada Central Committee.
- 19
- 20 • Fifth, the state and federal disclosure reports of the groups show that they receive and
21 expend their funds based on their own fundraising abilities and needs.
- 22
- 23 • Sixth, the Washoe County Republican Party chairman who sits on the Nevada Central
24 Committee board is one out of twelve board members and only 52 out of more than 360
25 members of the Nevada Central Committee are from Washoe County.
- 26

27 *Id.* at 2-3.

28 In contrast, the Nevada Republican Party asserts that the Washoe County Republican
29 Party is affiliated with the Nevada Central Committee. The Response of the Nevada Republican
30 Party states that all counties in Nevada are considered to be affiliated with the Nevada Central
31 Committee by the state of Nevada and the FEC. Nevada Republican Party Resp. at 1. The
32 Response explains that the Washoe County Republican Party chairman is a voting member of the
33 board of the Nevada Central Committee; the Washoe County Republican Party elects members
34 to attend all meetings of the Nevada Central Committee; and the bylaws of both groups provide
35 for mutual authority with respect to financial decisions. *Id.* The Nevada Republican Party
36 asserts that it never encouraged any county committee to file with the Commission or to claim to

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1 be unaffiliated, and was unaware that the Washoe County Republican Party had done so until
2 after the fact. *Id.* When the Nevada Central Committee learned about the filing, its chairman
3 contacted the Commission's Information Division regarding affiliation guidelines and was told
4 that the Commission considers the Nevada Central Committee and Washoe County Republican
5 Party to be "one and the same entity." *Id.* The Nevada Republican Party claims that it has not
6 violated the Act and that based on a comparison of Washoe County Republican Party reports to
7 Nevada Central Committee records, it has not violated any contribution limits. *Id.* at 1-2.

8 **B. Legal Analysis**

9 Under the Act, political committees "established or financed or maintained or controlled"
10 by the same persons or group of persons are treated as a single political committee for the
11 purposes of the contributions they make or receive, 2 U.S.C. § 441a(a)(5). Such committees are
12 called "affiliated committees," and the names of any affiliated committees must be disclosed on
13 a political committee's Statement of Organization filed with the Commission. 2 U.S.C. § 433(b);
14 11 C.F.R. §§ 100.5(g), 102.2(b), and 110.3. An exception to this rule exists, however, for a
15 political party's national committee and its state committee, which are not treated as affiliated,
16 and therefore do not share contribution limits. 2 U.S.C. § 441a(a)(5)(B); 11 C.F.R.
17 § 110.3(b)(1)(i) and (ii).

18 The Act, however, does not exempt political party committees at the county or other
19 subdivisional level of party organization within a State from the affiliation rules of section
20 441a(a)(5). Moreover, the Commission presumes that the political committees of a state party

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1 and those of subordinate state party committees³ are affiliated, absent a showing of lack of
2 funding and coordination between the political committees. 11 C.F.R. § 110.3(b)(3)(i)-(ii).

3 For example, in Advisory Opinion 1978-09 (Republican State Central Committee of
4 Iowa), the Commission determined that the presumption of affiliation would be unwarranted
5 where various county committees were, by statute, separate and independent from the
6 Republican State Central Committee of Iowa; the groups had separate bylaws, constitutions, and
7 funding aside from limited joint fundraising; and the state committee had no influence over how
8 the county committees spent their funds.

9 The record here is unclear as to whether the Washoe County Republican Party overcame
10 the presumption of affiliation with the Nevada Republican Party. The Washoe County
11 Republican Party received a small amount of funding, approximately \$550, from the Nevada
12 Central Committee in 2010 and 2011; the Washoe County Republican Party contends, however,
13 that this funding came from donors allocating a portion of their contributions, and not from the
14 Nevada Central Committee directly.⁴ The bylaws of the organizations also call for overlapping
15 leadership that may result in consultation regarding the groups' activities and expenditures, but
16 the Washoe County Republican Party claims that it has sole authority over how it spends its
17 funds.

18 Disclosure reports filed by the Washoe County Republican Party and the Nevada
19 Republican Party, however, confirm the State Party's assertion that even if the committees were

³ A subordinate committee is "any organization that [is] at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State or any organization under the control or direction of the State committee, and is directly or indirectly established, financed, maintained, or controlled by the State, district, or local committee." 11 C.F.R. § 100.14(c).

⁴ Although the Washoe County Republican Party did not provide any records to buttress this assertion, funds received through this type of allocation may be akin to the joint fundraising referenced in Advisory Opinion 1978-09, and therefore not necessarily considered funds received from another political party.

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1 affiliated and shared a contribution limit, they did not make excessive contributions to any
2 candidates, nor did any contributors to the committees make contributions in excess of the
3 combined limit for state and local party committees. Further, it does not appear that the Washoe
4 County Republican Party intends to continue its operations as a federal committee, as its
5 treasurer attempted to file Termination Reports with the Commission on February 20, 2013,
6 March 20, 2013, April 15, 2013, and May 17, 2013, and the Committee has no remaining cash
7 on hand.

8 Accordingly, the Commission finds no reason to believe that the Nevada Republican.
9 Party violated 2 U.S.C. § 433(b) and 11 C.F.R. § 102.2(b).

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